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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michael Russell

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EXAMINER

GUCKER, STEPHEN

ART UNIT

PAPER NUMBER

1649

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



***Election/Restrictions***

1. The Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16 and 34-35 drawn to a composition comprising a non-toxic lectin and a therapeutic agent, classified in classes 436 and 530, subclasses 827 and 396, respectively, for example.
- II. Claims 17-33 drawn to a method for treating a neurological condition, classified in class 514 and subclasses 2 and 12 for example.

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, Invention I can be used diagnostically to trace neuronal pathways that may be damaged by stroke or injury. Alternately, the process of Invention II can be practiced with the use of non-lectin transporting entities, such as transferrin, or by the use of liposomes.

3. This application contains claims directed to the following patentably distinct species: claims 3 (if Invention I is elected) and 21 (if Invention II is elected); SEQ ID NO:1, SEQ ID NO:2, and SEQ ID NO:3. The species are independent or distinct because they have different amino acid sequences.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. This application contains claims directed to the following patentably distinct species: claims 4 (if Invention I is elected) and 22 (if Invention II is elected): polypeptide, polynucleotide, and compound. The species are independent or distinct because they have different chemical structures and belong to different classes of biochemical products.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

5. This application contains claims directed to the following patentably distinct species: claims 5 (if Invention I is elected) and 23 (if Invention II is elected): growth factor, hormone, antibody, and cytokine. The species are independent or distinct because they have different chemical structures (amino acid sequences) and belong to different classes of biochemical products.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

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is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

6. This application contains claims directed to the following patentably distinct species: claim 8 (if Invention I is elected) and 26 (if Invention II is elected): CNTF, GDNF, BDNF, IGF1, CT1, TGF  $\beta$ 2, EGF, FGF, VEGF, and interferon  $\alpha$ . The species are independent or distinct because they have different chemical structures (amino acid sequences) and belong to different classes of biochemical products.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations

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of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

7. Because these inventions are distinct for the reasons given above, and because the search and examination of these groups are different because they involve separate searches in both the patent and non-patent literature, restriction for examination purposes as indicated is proper because the search and examination of these groups is different and would pose an undue burden to the examiner.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.1741).

9. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product

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claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technical Center 1600 general number which is (571) 272-1600.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gucker whose telephone number is (571) 272-0883. The examiner can normally be reached on Monday to Friday from 0930 to 1800.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres, can be reached at (571) 272-0867. The fax phone number for this Group is currently (571) 273-8300.



Stephen Gucker

June 13, 2006

  
JANET ANDRES  
SUPERVISOR, PATENT EXAMINER